IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 5672 of 2007(A)

PETITIONER:

G. RAMAN NAIR, S/O.GOVINDAN NAIR,
`GOPI VILASAM', DEVAGIRI P.O.,
KOTTAYAM.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY (DEVASWOM)
GOVERNMENT OF KRALA, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY,
DEVASWOM BOARD BUILDING, THIRUVANANTHAPURAM.

4. GOVERNMENT OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NEW DELHI.

ADDL.R5. T.N.CHANDRASEKHARA PILLAI,
RETIRED DISTRICT & SESSIONS JUDGE,
CHAIRMAN, DEVASWOM BOARD ELECTIONS
VANCHIYOOR, THIRUVANANTHAPURAM

(ADDL. R5 IMPLEADED AS PER ORDER DATED 30/10/2007
ON I.A. NO 6016/2007)

ADDL. R6. C.K.GUPTAN NAMBOOTHIRI, 8/D COTTON HILL HEIGHT
VAZHUTHACAUD, THIRUVANANTHAPURAM

(ADDL. R6 IMPLEADED AS PER ORDER DATED 30/10/2007
ON I.A. NO 6206/2007)

ADDL. R7. A.P. NARAYANAN, DEVASWOM BOARD MEMBER
TRAVANCORE DEVASWOM BOARD,
DEVASWOM BOARD BUILDING,
THIRUVANANTHAPURAM

ADDL. R8. P.K.SUMATHIKUTTY AMMA
DEVASWOM BOARD MEMBER
TRAVANCORE DEVASWOM BOARD
DEVASWOM BOARD BUILDING,
THIRUVANANTHAPURAM

(ADDL. R7 AND R8 IMPLEADED AS PER ORDER DATED 30/10/2007
ON I.A. 7573/2007)

R1 BY ADV SRI AMARENDRA SHAREN, ASST. S.G.
AND SRI G. PRAKASH AND
SR GOVT. PLEADER SRI K.K. RAVINDRANATH
R3 BY ADV. SRI U.K. RAMAKRISHNAN, STANDING COUNSEL
R4 BY ADV. SRI AMARENDRA SHAREN, ASST. S.G.
AND ADV. SRI G. PRAKASH
ADDL. R5 TO R8 BY ADV. SRI N.N.SUGUNAPALAN (SR ADVOCATE)
AND ADV SRI S. SUJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/11/2007, ALONG WITH WPC NO. 4348 OF 2007
WPC NO. 4391 OF 2007 WPC NO. 4739 OF 2007
WPC NO. 4789 OF 2007 WPC NO. 4800 OF 2007
WPC NO. 5086 OF 2007 WPC NO. 5814 OF 2007
WPC NO. 5407 OF 2007 WPC NO. 5428 OF 2007
WPC NO. 6603 OF 2007 WPC NO. 7045 OF 2007
WPC NO. 26761 OF 2007 THE COURT ON 07/12/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

W. P. C. Nos. 5672, 4348, 4391, 4739,
4789, 4800, 5086, 5814, 5407, 5428,
6603,7045 and 26761 of 2007

Dated: 7th December 2007

JUDGMENT

Radhakrishnan, J.

Constitutional validity of certain provisions of the Travancore-Cochin Hindu Religious Institutions (Amendment) Ordinance, 2007 which later became an Act are under challenge in these writ petitions.

2. Constitutional validity of certain provisions of the Travancore-Cochin Hindu Religious Institutions Act, 1950 was the subject matter of a decision of a Full Bench of this court in P.M. Bramadathan Nambooripad v. Cochin Devaswom Board (AIR 1956 T.C. 19). Contention was raised before the Full Bench that Sections 63 and 64 of the Act would amount to interference with the right of the Hindus to manage their own affairs in the matter of religion. Challenge against these provisions was repelled by the Full Bench and held that the restrictions imposed by Sections 63 and 64 in the choice of the members of the Cochin Devaswom Board did not violate

Articles 14, 15(1), 19(1) (f) and (g) and 26 of the Constitution of India. Court also held that the classification of institutions and endowments based on religion, Hindu, Muhammadan or Christian, cannot be said to be either arbitrary or unreasonable having regard to the object sought to be achieved, the better administration and management of such institutions. Validity of some of the provisions of the Act again came up for consideration before a Division Bench of this court in Muraleedharan Nair v. State of Kerala (1990 (1) K.L.T 874). The court examined the question whether Hindu M.L.As have to give a declaration that they believe in God and temple worship before exercising their right to vote at the election of the Devaswom Boards and whether Hindu M.L.As have to declare that they believe in God and temple worship before they get nominated to the Devaswom Board. The Bench took the view that only those Hindus who believe in God and temple worship can get nominated or vote at the election of the Devaswom Board.

3. History of the legislation and the situations prevailed prior to the coming into force of the legislation has been dealt with in detail in paragraph 9 of the decision in Muraleedharan Nair's case, supra and hence it is unnecessary to trace out the history which led to the enactment of Travancore Cochin Hindu Religious Institutions Act, 1950. We are in this case concerned only with the question whether the amendment effected by

Ordinance 5 of 2007 will in any way affect the fundamental rights guaranteed to the petitioners under Articles 14, 25 and 26 of the Constitution of India and also whether the secular government can make any inroad into the autonomy of the Devaswom Boards constituted under the Act.

4. The Travancore-Cochin Hindu Religious Institutions Act has constituted a Board by name "Travancore Devaswom Board" under Section 4 of the Act as a body corporate for the proper administration of the temples which fall under its jurisdiction. The Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious Institutions and Endowments under the management of the Board. Chapter II of the Act deals with Travancore Devaswom Board and Chapter VIII deals with Cochin Devaswom Board. We will first deal with the various amendments effected to the Act by Act 5 of 2007. Section 2 of the Act deals with definitions. Section 2 (aa) defines "Hindu" to mean a person who is a Hindu by birth or by conversion and professes the Hindu religion. Proviso to that Section says that a Hindu member to be nominated or elected to the Board under Section 4 shall be a person who believes in God and temple worship and who shall make an

oath before the Secretary of the Board to that effect in the form prescribed by the Government for the purpose before he enters upon his office. Above mentioned proviso was substituted by Act 5 of 2007 as follows:

> "Provided that a Hindu member to be nominated or elected to the Board under Section 4 shall make an oath before the Secretary to the Government of Kerala, Department of Devaswom to the effect that he is professing Hindu religious rites and is a believer of God and temple worship, before he enters upon his office."

By virtue of the above mentioned proviso a Hindu member nominated or elected to the Board has to take oath not before the Secretary of the Board but before the Secretary to the Government of Kerala, Department of Devasom. Contention was raised that a member nominated or elected to the Board when takes oath before the Secretary to the Government of Kerala will be succumbing to a secular government since Secretary to the Government is part of the Government which consists of people from all religions and faiths and it is unconstitutional and illegal to make a member of the religious Board to subscribe an oath before an officer of the secular State. Same is the position with Cochin Devaswom Board since consequential amendments have been effected to Section 61 of the Act. Proviso added therefore to Section 2 (aa) as well as clause (4A) of Section 61 of the Act is unconstitutional, illegal and violative of Articles 25 and 26

of the Constitution of India. Another important amendment seriously attacked by the petitioners is amendment to Section 29 of the Act. Section 29 deals with Board's control over the Devaswom Department. Sub-section (2) of Section 29 says that the Devaswom Department shall, subject to the supervision, direction, and control of the Board, be under the Devaswom Commissioner who shall be appointed by the Board and he shall be a Hindu. Sub-section (3) says that the Devaswom Commissioner shall be the Chief Executive Officer of the Department of Devaswoms and Hindu Religious Endowments. Sub-section (3A) was inserted by the amending Act which reads as follows:

> "(3A) The Devaswom Commissioner shall submit reports to the Government, once in three months, with respect to the working of the Board."

After Section 74 of the principal Act Section 74A was also inserted in respect of Cochin Devaswom Board which authorises the Board to appoint a Devaswom Commisioner for the Administration of the incorporated and unincorporated Devaswom and the Devaswom Commissioner has to submit reports once in three months with respect to the working of the Board. Petitioners submit that the above amendments making it incumbent on the Devaswom Commissioner to send periodical reports to the Government is a

direct interference with the affairs of the statutory Board by a secular Government. Commissioner appointed by the Board, it was contended, has the power to take any decision in regard to the administration of Hindu temples and institutions and the power has to be exercised strictly in accordance with the ancient usage and in terms with the religious, ceremonial and other observances of the temples. Petitioners submit that secular Government have no power to interfere with the duties and functions of the Devaswom Commissioner and hence calling for report from the Devaswom Commissioner, that too of the Board is not legal. Learned counsel submitted that the attempt is to clothe the secular Government with the power to revise or modify such report since presumably the receiving of the report cannot be a mere formality and the Government is thus indirectly given the power to interfere with the management of the temples through the Commissioner. In Section 32 of the principal Act, after sub-section (8) the amending Act has also inserted the following sub-section, namely (8A) which reads as follows:

> "(8A) The Board shall forward to Government a copy of the audit report referred to in sub-section (8) within two months from the end of the year to which the audit report relates."

Similarly Section 103 of the Act was also amended enabling the Cochin

Devaswom Board to forward to the Government copy of the audit report in two months from the end of the year to which the report relates. Contention was raised that direction issued by the Devaswom Boards to send the report to the Government will have the effect of succumbing the Boards to the will and pleasure of the secular Government and they could effectively control the Board by taking away the autonomy of the Board.

5. Petitioners are also aggrieved by the insertion of Section 34A which is extracted herein below.

> "34A. Appointment of a Commission -(1) Notwithstanding anything contained in this Act, the Government may by notification in the Gazette, appoint a Commission to enquire into and report on the allegations of irregularities, corruption, maladministration or misappropriation of funds by the Board.
>
> (2) The Commission appointed under sub-section (1) shall be a sitting or retired Judge of a High Court, who is a Hindu.
>
> Provided that before appointing a person as the Commission, the Government shall consult the Chief Justice of the High Court of Kerala to ascertain whether the services of a sitting Judge of the High Court of Kerala is available and if and only if the services of a sitting Judge is not available, a retired Judge of a High Court shall be appointed as such Commission.
>
> (3) The term and other conditions of appointment of the Commission shall be such as may be specified in the order appointing such Commission."

Section 76B was also inserted enabling the Government to appoint

Commission to enquire into and report on the allegations of irregularities, corruption, maladministration or misappropriation of funds by the Cochin Devaswom Board as well. Petitioners submit that the power of audit has been statutorily vested in the High Court under Section 32 of the Act in respect of Travancore Devaswom Board and under Section 102 so far as Cochin Devaswom Board is concerned. The provision by which the Boards were directed to send its report to the Government will have the effect of usurping the powers of the High Court conferred on it under section 32 of the Act and Section 102 and the same would also confer power on the secular Government to interfere with the administration of the Board. A few of the other provisions are also under challenge such as reduction of the period or term of the then existing Board as well as the constitution of the temple advisory committee and so on. Provision introduced for entrusting the power of appointment to the Public Service Commission is not being given effect and hence no contention was addressed.

6. State of Kerala and Principal Secretary of the Devaswom filed detailed counter affidavit trying to justify the amendments effected. Challenge against the manner in which the Ordinance was brought was met in the counter affidavit. It is stated that there is nothing illegal in a Hindu member nominated or elected by the Board to subscribe an oath before the

Secretary to Government of Kerala, Devaswom Department to the effect that he is professing Hindu religious rites and is a believer of God and temple worship before he enters office. It is pointed out that the mere fact that he has to take oath before the Secretary to Government of Kerala does not in any way violate the religious faith or affect one's belief in temple worship and therefore there is no illegality in the said provision. It is stated in the counter affidavit that the provision requiring submission of a copy of the audit report to the Government would not amount to interference with the powers conferred on the High Court in auditing the accounts of the Devaswom Boards and it does not affect the functioning of the Boards or the Commissioner. It is also pointed out that under sub-section (12) of Section 32 a copy of the audit report is to be supplied to any person who applies for the same. Similarly, only modification brought to Section 29 of the principal Act which deals with Board's control over the Devaswom Department is by the insertion of sub-section (3A) by which Devaswom Commissioner is made duty bound to submit reports once in three months to the Government in respect of the working of the Board. Such a provision was incorporated without depriving the Board of any of its power of control over the Devaswom department conferred by Section 29 or making the exercise of such power subject to the control or supervision of

the Government. It is pointed out that the amendment made to Section 29 of the Act by the Ordinance would not amount to taking over of administration of the Board by the Government. Further it is stated in the counter affidavit that Section 34A was inserted into the principal Act by Section 17 of the Ordinance and it provides for appointment of a Commission by the Government to enquire and report on the allegations of irregularities, corruption, maladministration or misappropriation of funds by the Board. Sub-section (2) of Section 34A mandates that the Commission so appointed shall be a sitting judge or retired judge of a High Court who should also be a Hindu. Section 34 also enables the Government to consult the Chief Justice to ascertain whether service of a sitting Judge is available and if and if only the service of a sitting judge is not available a retired judge of the High Court shall be appointed as such Commission. It is also pointed out that even if the Commission submits report to the Government, the Government will forward the same to the High Court to the Government for appropriate action and the Act does not confer any power on the Government to take any action on the report. Contention that Hindu denomination alone was picked up and chosen for discriminatory treatment was also repelled in the counter affidavit filed by the State. Referring to the decision of the Full Bench of this court in

Brahmadathan Namboothiripad's case, supra it is stated that the classification of institutions and endowments based on religion cannot be said to be either arbitrary or unreasonable having regard to the object sought to be attained, namely the better administration and management of such institutions. Therefore it is stated that the Act of the year 1950 and the amendment Act does not offend Article 14, 25 or 26 of the Constitution.

7. Senior Counsel appearing for the State pointed out that the provisions of the amending Act did not interfere with the right of the petitioners or other members of the Hindu community to establish and maintain institutions for religious and charitable purposes and to manage its own affairs guaranteed to them under Articles 25 and 26 of the Constitution of India. It was pointed out that the management of a temple, maintenance of discipline and order in temple, control of activities of the temple staff and payment of remuneration to such staff are secular activities which can be regulated by State law. It was further stated that management of properties of temples and other such activities carried on by the Travancore and Cochin Devaswom Boards are secular in character and could not be regarded as religious practice under Article 25 (1) or as amounting to affairs in matters of religion under Article 26(b). It is stated that maintenance of proper accounts by the Board, curbing of corruption and mismanagement

by the Board, appointment of officers and employees in the service of the Board etc. are thus secular functions which can be regulated by laws made by the State. Further it is stated that there is no illegality in reducing the term of the members of the Board from 4 years to 2 years which is valid in law.

8. We heard M/s Govind K. Bharathan, N.N. Sugunapalan, P.B. Sahasranamam, M.P.Ashok Kumar and Anchal C. Vijayan and also heard Additional Solicitor General Sri Amarendra Sharan, Government Pleader Sri K. K. Ravindranath and Standing Counsel for the Travancore Devaswom Board Sri U.K.Ramakrishnan.

9. The Travancore-Cochin Hindu Religious Institutions Act, 1950 stood the test of times for over half a century and some of the provisions were subject matter of challenge before this court in Brahmadathan Namboothiripad's case, Muraleedharan Nair's case etc. Challenge was also made against some of the similar provisions of the Guruvayur Devaswom Act which was also subject matter of the decision of a Full Bench of this court in Krishnan v. Guruvayoor Devaswom Managing Committee (1979 K.L.T 350), M.P. Gopalakrishnan Nair v. State of Kerala (1999) 3 K.L.T 574) which was affirmed by the apex court in M.P. Gopalakrishnan Nair v. State of Kerala (2005) 11 S.C.C 45) and Guruvayoor Devaswom

Employees' Association v. State of Kerala (1999 (3) KLT 745) wherein challenges were made to various provisions of the Guruvayoor Devaswom Act as violative of Articles 25 and 26 of the Constitution of India. Provisions of the Guruvayoor Devaswom Act were elaborately discussed pertaining to the temples and religious institutions owned by the Hindu denomination and it is unnecessary to reiterate the various principles enunciated in those decisions.

10. We are only concerned in this case with the question whether the amendment effected by Act 5 of 2007 would in any way violate Articles 14, 25 and 26 of the Constitution of India and whether those provisions make any inroad into the religious rites and practices of the Hindu denomination. Further question whether the Board which has to act as an independent statutory body has surrendered its powers to a secular Government and whether the provision directing the Devaswom Commissioner to send periodical reports to the Government as well as power conferred on the Government to appoint enquiry commission would amount to interfering with the rights of the Hindu denomination. Relief has also been prayed for in W.P.C. No 26761 of 2007 seeking a declaration that the amendments made are violative of the fundamental rights guaranteed under Article 14 of the Constitution of India inasmuch as members of the Hindu community

alone are subjected to hostile discrimination and that the amendment Act is blatant attempt to take over the administration of Hindu temples and religious institutions by a secular government.

11. We will first consider whether the provisions incorporated by the amendment Act directing the Devaswom Commissioner as well as the Board to send periodical reports to the Government will in any way affect the rights of the Hindu religious denomination. We have gone through the various provisions of the principal Act as well as the amendment Act and we have not come across any provision which confers power on the secular Government to take any action on the basis of the report submitted by the Devaswom Commissioner or by the Board. Legislature in its wisdom has not conferred any power on the Government to take any action against the Board or the Commissioner on the basis of the report submitted before them. On the other hand Section 32 (12) of the Act says that a copy of the audit report has to be supplied to any person who duly applies for the same. Copy of the audit report as well as forwarding the report by the Devaswom Commissioner to the Government therefore would be available to any citizen and therefore the mere fact that the Devaswom Commissioner as well as the Board have to submit report to the Government would not cause any prejudice to the Board or the Commissioner, as the case may be;

nor will it violate Art. 25 or 26 of the Constitution. On receipt of the report Government can only place it before the High Court for further action and no power is conferred on the Government to take any action on the basis of the report. Further the amendment Act also enables the Government to appoint a Commission to enquire into and report on the allegations of irregularities, corruption, maladministration or misappropriation of funds by the Board. Only a sitting or retired judge of the High Court can be appointed as Commission and Government shall consult the Chief Justice of the High Court of Kerala to ascertain whether the services of a sitting Judge of the High Court is available and if and only if the services of a sitting judge is not available, a retired judge of a High Court shall be appointed as such Commission.

12. Legislature has conferred no power on the Government to take any action on the basis of the report submitted by the Enquiry Commissioner, Devaswom Commissioner or the Board. Report can only be forwarded to the High Court to take further action in accordance with law. Powers conferred on the High Court under Section 32 is to initiate proceedings and removal of the members of the Board on the ground of proved misbehaviour, incapacity have not been taken away. Section 68 of the Act states that the Board shall be bound to administer the affairs of

the incorporated and unincorporated Devaswoms and institutions under its management in accordance with the objects of the trust, the established usage and customs of the institutions and to apply their funds and property for such purposes. Further it is stated that as per Section 69 of the Act a member of the Board may be removed from his office by the High Court on the ground of proved misbehaviour or incapacity on an application made to the High Court by the Advocate General or a person belonging to the Hindu community. So also Section 102 of the Act states that the accounts of the Board shall be audited annually and the Board shall keep regular accounts of all receipts and disbursements. Audit shall be made by the auditors appointed by the High Court in the case of the accounts of the Board. After completing the audit for any year or for any shorter period or for any transaction or series of transactions, as the case may be, the auditor shall send a report to the High Court in the case of the accounts of the Board. As per Section 104 the auditor shall specify in his report all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the Board or to incorporated or unincorporated Devaswoms or institutions under the management of the Board as the case may be, or of loss or waste of money or other property thereof caused by neglect of misconduct. Section 105 of the Act deals with rectification of

irregularities. The High Court shall send to the Board a copy of every audit report relating to the accounts of incorporated and unincorporated Devaswoms and those of the Board and it shall be the duty of the Board to remedy any defects or irregularities pointed out by the auditor and report the same to the High Court. If on a consideration of the report of the auditor or otherwise the High Court thinks that the Board or any member thereof was guilty of misappropriation or wilful waste of the funds or of gross neglect resulting in a loss to the incorporated or unincorporated Devaswom or institutions under the management of the Board, the High Court may after giving notice to the Board or the member, as the case may be, to show cause why an order of surcharge should not be passed against the Board or the member and after considering the explanation if any after taking such evidence as the High Court deems necessary pass an order of surcharge against the Board or member as the case may be. The order of surcharge may be executed against the member or members concerned of the Board as if it were a personal decree passed against them by the High Court. The High Court can also interfere with under article 226 of the Constitution of India if the Board acts in excess of its authority or arbitrarily. In other word;s, sufficient safeguards are provided under law if the Board acts against the interest of the administration of the Devasoms and institutions.

13. Powers of the High Court over the Boards have been elaborately considered by this court in Vijayan v. Cochin Devaswom Board (2004 (3) KLT 670). It is therefore clear that the mere fact that the Devaswom Commissioner has to submit report to the Government once in three months and the Board to forward to the Government copy of the audit report within two months from the end of the year would not mean that the Government have power to take any action against them on the basis of the reports. Government if finds any illegality, irregularity, maladministration or corruption etc. can always bring it to the notice of the High Court and it is for the High Court to take further action by virtue of the powers conferred on it under the statute. Under such circumstances we are not prepared to say that the above mentioned provisions are in any way violative of Articles 14, 25 and 26 of the Constitution of India.

14. We may now examine whether clause (aa) of Section 2 obliging a Hindu member to be nominated or elected to the Board under Section 4 to make an oath before the Secretary to Government of Kerala, Department of Devaswom violates Articles 25 and 26 of the Constitution of India and hence sustainable in law. The provision obliges a Hindu member nominated or elected to the Board under Section 4 of the Act to make an oath before the Secretary to Government of Kerala, Department of

Devaswom to the effect that he is professing Hindu religious rites and is a believer of God and temple worship, before he enters upon his office. Previously the provision obliged a Hindu member to make an oath before the Secretary of the Board before he entered upon his office. Secretary of the Board is invariably a Hindu who believes in God and temple worship. No provision has been brought to our notice stating that the Secretary to the Government of Kerala will always be a Hindu who believes in temple worship. Learned Government Pleader on instructions submitted that the practice hitherto followed was to appoint a member of Hindu community as the Secretary to Government of Kerala, Devaswom Department. No provision has been brought to our knowledge that such a person should be a person who is professing Hindu religious rites and he is a believer of God and temple worship. Non believers are plenty in Hindu community. Hinduism is only a way of life and all Hindus need not be believers in God and temple worship. Non believer of God and temple worship and a person who is not professing any Hindu religious rites has no role in the administration and management of temples even if he is a Hindu. Induction of such persons in the management and administration of the temples should not be encouraged. Interference of Atheist in the temple administration would wound religious feelings of Godly and therefore shall

not be attempted by a secular Government. Oath taking is not a formality, it is a sacrosanct act and we find no rationale in insisting that a person professing Hindu religious rites and is a believer of God and temple worship to swear and make such an affirmation before an officer of a secular Government. Insistence that a Hindu member elected or nominated to the Board should take an oath before the Secretary to Government, Devaswom Department who may be a Hindu but may be a non believer in God and temple worship and hence clearly interferes with the right of Hindu denomination, hence violative of Articles 25 and 26 of the Constitution of India and hence we strike down the stipulated provisos to Section 2 (aa) and Section 61 (4A) of the Act as unconstitutional and void.

15. Counsel for the petitioners in W.P.C. No 5672 of 2007 submitted that the provision reducing the term of the Board from four years to two years is illegal and violative of Articles 14 and 25 of the Constitution of India. Legislature in its wisdom earlier felt that four year period would be the term of office of the members of the Board but later felt that it should be two years. We cannot substitute our wisdom to that of the legislature. Consequently petitioners in W.P.C. 5672 of 2007 and certain others will have to demit their office. We are not prepared to say that reduction of the

term of office of the members is illegal warranting interference by this court.

16. We will now examine the contention raised by the petitioner in W.P.C. No 26761 of 2007 as well as the petitioners in W.P.C. No 4691 of 2007 that Hindu community alone has been picked up for hostile discrimination, in spite of serious allegations of maladministration, corruption and mismanagement in connection with other religious Institutions belonging to Christian and Muslim community etc. Contention raised by the petitioners has been clearly answered by the Full Bench decision of this court in Brahmadathan Namboodiripad's case, supra. Contention was raised that while Christian and Muhammadan religious and charitable institutions and endowments were excluded, Hindu religious and charitable endowments and institutions alone were selected for special treatment and that such a discrimination is unwarranted, unreasonable and unjust. The challenge was repelled by the Full Bench stating that the classification of institutions and endowments based on religion, Hindu, Muhammedan or Christian, cannot be said to be either arbitrary or unreasonable having regard to the object sought to be attained, viz. better administration and management of such institutions. It is stated that the management of a temple, maintenance of discipline and order in temple,

control of activities of the temple staff and payment of remuneration to such staff are secular activities which can be regulated by State law. Further it is stated that the management of properties of temples and other such activities carried on by the Travancore and Cochin Devaswom Boards are purely secular matters and could not be regarded as religious practice under Article 25 (1) or as amounting to affairs in matters of religion under Article 26(b). It is also stated that maintenance of proper accounts by the Board, curbing of corruption and mismanagement by the Board, appointment of officers and employees in the administrative service of the Board are thus secular functions which can be regulated by laws made by the State. It is also stated that there has been serious allegations regarding the various activities of the Devaswom Boards such as corruption, maladministration and mismanagement of funds by the Board and the allegations were raised by the the public. It is under such circumstances that the Legislature has stepped in as to control the secular activities of the Board which cannot be charactarised as hostile discrimination. Contention of the petitioners that other religions denominations have been completely left out as if the Legislature have no power to legislate with regard to those religious denominations has no basis. Full Bench in Brahmadathan Namboodiripad's case has specifically held as follows:

> "As the incidents and the nature of the institutions and endowments of different religions differ in several respects, it cannot be said that the classification is based solely on religion as the institutions included in the classification are religious as well as secular and having regard to the object in view, the institutions having several common features are rightly classified under the group. Article 14 does not prevent the legislature from taking up the set of institutions for legislative consideration at one time and enacting laws in respect of them reserving the other types of institutions for consideration to a future date."

Power of the Legislature to legislate in respect of religious charitable institution in case there is clear case of corruption, maladministration, misappropriation of funds, dealing with unaccounted money or acting against the interest of the religious denomination by persons in management cannot be ruled out, whether it is a Hindu, Christian or Muslim denomination. If any institution commits maladministration or misappropriation of funds or is involved in corruption or dealing in black money which affects the very social fabric of the society whether that institution belongs to Hindu, Muslim or Christian community is of no concern to the legislature. Legislature in its wisdom can always step in and bring in a legislation not affecting the religious faith, practices but to control their secular activities. Contention raised by the petitioners that the Hindu community alone has been picked up for hostile discrimination

therefore cannot be sustained.

17. We therefore repel the challenge against the various provisions of the Travancore Cochin Hindu Religious Institutions (Amendment) Act 5 of 2007 except the proviso to clause (aa) to Section 2 and the proviso to clause (4A) of Section 61 of the Act obliging a Hindu member to be nominated or elected to the Board to subscribe oath before the Secretary to the Government of Kerala, Department of Devaswom which in our view clearly interferes with the fundamental right guaranteed to Hindu denomination under Articles 25 and 26 of the Constitution of India. Writ petitions are disposed of as above.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
A.K.BASHEER
Judge

07/12/2007
en/

[true copy]

WPC 5672/2007

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of covenant entered into by the Rulers of Travancore and Cochin for the formation of the United State of Travancore and Cochin
Ext.P2 - - True copy of Ordinance No 5 of 2007 viz. The Travancore Hindu Religious Institutions (Amendment) Ordinance, 2007 issued by the Government of Kerala
Ext P3 - True copy of notification dated 14.3.2007 issued by the Governor
Ext P4 - True copy of the notification dated 21.4.2007 issued by the Chairman of Travancore Cochin Devaswom along with the extract of the Act 5 of 2007

Respondent's exhibits:

Ext R1(a) - True copy of the notification dated 20.10.2004 issued by the Chairman, Devaswom Board Election, 2004

[true copy]

W.P.C. 4348 of 2007

Appendix

Petitioner's exhibits:
Ext P1 - Photostat copy of judgment of this court relating to the process of selection to the Board No WPC 37984 of 2003 and 35455/03 dt 28.09.2006
Ext P2 - True copy of Ordinance No 5/2007 dated 5.2.2007
Ext P3 - True copy of extract of speeches in Mathrubhumi dated 15.11.2006
Ext P4 - True copy of the extract of speeches in Kerala Kaumudi dated 15.11.2006
Ext.P5 - True copy of extract of speeches in Madhyamam daily dated 15.11.2006
Ext P6 - True copy of extract of speeches in Veekshanam dated 15.11.2006 and Hindu dated 16.11.2006
Ext.P7 - True copy of the extract of speeches in Malayala Manorama dated 15.11.2006
Ext.P8 - True copy of extract of speeches in Mathrubhumi dated 15.11.2006
Ext P9 - True copy of extract of speeches in Malayala Manorama dated 16.11.2006
Ext.P10 - True copy of extract of speeches in Veekshanam dated 15.11.2006
Ext P11 - True copy of extract of speeches in Malayala Manorama dated 3.11.2006
Ext P12 - True copy of extract of speeches in Mathrubhumi dated 10.11.2006
Ext P13 - True copy of extract of speeches in Mangalam dated 10.11.2006
Ext P14 - True copy of extract of speeches in Malayala Manorama dated 16.11.2006
Ext P15 - True copy of extract of speeches in Kerala Kaumudi dated 2.2.2007
Ext P16 - True copy of extract of speeches in Mathrubhumi dated 4.2.2007
Ext P17 - True copy of extract of speeches in Veekshanam dated 4.2.2007
Ext P18 - True copy of the Article
Ext P19 - True copy of Article of list in the Malayala Manorama dated 10.4.2007

[true copy]

W.P.C. No 4391/2007

Appendix

Petitioner's exhibits:
Ext P1 - True copy of notification (Ordinance 5 of 2007) published in the Kerala Gazette extra ordinary dated 5.2.2007

[true copy]

WPC 4739 of 2007

APPENDIX
Petitioner's exhibits:

Ext P1 - True copy of Ordinance No 5 of 2007 vide Notification No 2988/Leg.A1/2007/Law dated 5.2.2007

[true copy]

W.P.C. No 4789 of 2007

Appendix

Ext P1- True copy of Gazette Notification published by the first respondent vide G.O. (Rt) No 4399/2004/RD dated 8.11.2004
Ext P2 - True copy of the communication No 58416/DEV.2/2004/RD dated 9.11.2004 issued by the second respondent to the petitioner
Ext P3 - Copy of Covenant entered into by the Rulers of Travancore and Cochin for the formation of the United State of Travancore and Cochin with Government of India
Ext P4 - True copy of the Ordinance No IX of 1124 promulgated by the Rajpramukh
Ext P5 - True copy of the Ordinance No 1 of 1950 Hindu Religious Institutions Ordinance 1950 promulgated by the Rajpramukh of the State of Travancore Cochin
Ext P6 - Copy of Ordinance No 5 of 2007 the Travancore Cochin Hindu Religious Institutions (Amendment) Ordinance 2007 promulgated by the Governor and published by the Government of Kerala in the Kerala Gazette dated 05.02.2007
Ext P7 - True copy of the notice issued for conducting election to fill up the vacancy of the member of the Travancore Devaswom Board
Ext P8 - True copy of the said notification authorizing Sri Chandrasekhara Pillai dated 14.3.2007
Ext P9 - True copy of Hindu Religious Institutions (Amendment) Act 2007 (Act 5 of 2007)

[true copy]

W.P.C. No 4800 of 2007

APPENDIX

Petitioner's exhibits:

Ext P1 - True copy of Ordinance No 5 of 2007 the Travancore Cochin Hindu Religious Institutions (Amendment) Ordinance 2007 promulgated by the Governor and published by the Government of Kerala in the Kerala Gazette dated 5.2.2007

[true copy]

W.P.C. No 5086 of 2007

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Notification No 2988/Leg.A1/2007/Law dated 5.2.2007 (Ordinance 5/2007) issued by third respondent

[true copy]

W.P.C. No 5814 of 2007

Appendix

Petitioner's exhibits:

Ext P1 - Photocopy of the Travancore Cochin Hindu Religious Institutions (Amendment) Ordinance 2007

Ext P2 - Photocopy of the report of the Vigilance and Anti Corruption Bureau dated 27.12.2005

Ext.P3 - Photocopy of the order issued by the Government dated 21.11.2006

[true copy]

W.P.C. No 5407 of 2007

Appendix

Petitioners' exhibits:

Ext P1 - Photocopy of the Ordinance No 5/2007 dated 5.2.2007

[true copy]

W.P.C. No 5428 of 2007

Appendix

Petitioner's exhibits:

Ext P1 - True copy of Ordinance No 5 of 2007 vide Notfication No 2988/Leg A1/2007/Law dated 5.2.2007

Ext P2 - True copy of notification dated 14.3.2007 issued by the Governor

Ext.P3 - True copy of the notification dated 21.4.2007 issued by the Chairman of Travancore Cochin Devaswom Board along with extract of the act 5 of 2007

[true copy]

W.P.C. No 7045 of 2007

Appendix

Petitioner's exhibits:

Ext P1 - True copy of Ordinance No 5 of 2007 dated 5.2.2007

[true copy]

W.P.C. No 26761 of 2007

Appendix

Petitioners' exhibits:

Ext P1 - Photocopy of the Ordinance No 5 of 2007

Ext P2 - Photocopy of the Covenant issued by the Maharaja of Travancore

Ext P3 - Photocopy of the Ordinance No IX of 1124

Ext P4 - Photocopy of the Travancore Cochin Hindu Religious Institutions (Amendment) Act 2007

[true copy]